

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 23-319(5) (DWF/ECW)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Justin Dean Priebnow,

Defendant.

INTRODUCTION

Defendant Justin Dean Priebnow moves to sever his case from his co-defendants' case. (Doc. No. 169.) In a Report and Recommendation ("R&R"), Magistrate Judge Elizabeth Cowan Wright recommended denying the motion. (Doc. No. 191.) Priebnow filed an objection to the R&R. (Doc. No. 197.) The Government opposes the objection. (Doc. No. 203.) After an independent review of the record and objection, the Court adopts the Magistrate Judge's R&R.

DISCUSSION

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b).¹ The relevant factual and procedural background for the above-entitled matter is

¹ There is a split in this district about whether an R&R on a motion to sever should be reviewed under Local Rule 72.2(a) or 72.2(b). See *United States v. Abdi*, No. 23-cr-295 (ECT/DJF), 2024 WL 323577, at *3 n.2 (D. Minn. Jan. 29, 2024); *United States v. Montanari*, No. 14-cr-161 (ADM/JJK), 2014 WL 4541120, at *1 n.1 (D. Minn. Sept. 11, 2014). Local Rule 72.2(a) is for review of non-dispositive motions and requires

clearly and precisely set forth in the Magistrate Judge's R&R and is incorporated by reference.

In the R&R, Magistrate Judge Wright concluded that Defendant's motion to sever merely speculates that there will be irreconcilable defenses between the co-defendants and the possible blame-shifting between co-defendants is insufficient to establish that their defenses are irreconcilable. (Doc. No. 191 at 6.) Additionally, Magistrate Judge Wright found Defendant's argument that the jury would be unable to compartmentalize the evidence was unsupported because he only offered "boilerplate statements of potential prejudice" and "conclusory statements." (*Id.* at 9.) Importantly, Magistrate Judge Wright highlighted that Defendant may renew his motion to sever at the time of trial if the appropriate circumstances arise. (*Id.* (citing *United States v. Fasthorse*, No. 15-cr-165 (JRT/LIB), 2015 WL 10382347, at *5 (D. Minn. Nov. 19, 2015).)

Defendant objects to Magistrate Judge Wright's conclusions. (Doc. No. 197.) He primarily reasserts the arguments already made before Magistrate Judge Wright that are fully addressed in the R&R. He reiterates "Priebnow must be severed from his codefendants because his defense is irreconcilable to his co-defendants and the jury will not be able to compartmentalize the evidence." (*Id.* at 2.) Defendant also asserts that sanitizing his co-defendant's statement would not resolve any *Bruton* issues. (*Id.* at 4.)

that a district judge only "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Local Rule 72.2(b) is for review of dispositive motions and requires *de novo* review. A motion to sever is generally considered a non-dispositive motion. The Court reviews the R&R here under the *de novo* standard and notes that the result would be the same regardless of which standard applies.

Having considered these arguments and the relevant case law, the undersigned agrees with Magistrate Judge Wright's determination that joined defendants are proper in this case, at least at this time. Defendant's arguments fail to show prejudice. He continues to speculate about possible defenses and does not show any defenses that would be truly irreconcilable. Regarding the possible sanitizing solution, Defendant fails to explain how severance would provide a remedy to any *Bruton* problem. The Court agrees with Magistrate Judge Wright that this claim is premature at this juncture. Without more information from Defendant at this time, the strong presumption against severing properly joined cases under Federal Rules of Criminal Procedure 8 and 14 supports denial of this motion. Consequently, the Court adopts the Magistrate Judge's recommendation on this matter.

ORDER

Based upon the foregoing, and the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Priebnow's objection (Doc. No. [197]) to Magistrate Judge Elizabeth Cowan Wright's August 12, 2024 Report and Recommendation is **OVERRULED**.
2. Magistrate Judge Elizabeth Cowan Wright's August 12, 2024 Report and Recommendation (Doc. No. [191]) is **ADOPTED**.
3. Priebnow's motion for severance from co-defendants (Doc. No. [169]) is **DENIED**.

Dated: October 7, 2024

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge